

Message Text

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TO SECSTATE WASHDC PRIORITY 4365

INFO AEC GERMANTOWN PRIORITY

AMEMBASSY MEXICO PRIORITY

UNCLAS SECTION 1 OF 3 IAEA VIENNA 4319

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SUBJECT: ENRICHMENT SERVICES FOR LAGUNA VERDE UNIT II POWER REACTOR

REF: IAEA VIENNA 4018

1. MISSION HAS RECEIVED FOLLOWING DRAFT TEXT OF PROPOSED
SUBJECT SUPPLY AGREEMENT. AGENCY REQUESTS U.S. COMMENTS SOONEST.

2. BEGIN TEXT:

DRAFT SECOND SUPPLY AGREEMENT

AGREEMENT FOR THE SUPPLY OF URANIUM ENRICHMENT SERVICES FOR
A SECOND REACTOR UNIT FOR A NUCLEAR POWER FACILITY IN MEXICO

WHEREAS THE GOVERNMENT OF THE UNITED MEXICAN STATES
(HEREINAFTER CALLED "MEXICO"), DESIRING TO SET UP A SECOND
REACTOR UNIT AT THE NUCLEAR POWER PLANT OF LAGUNA VERDE,
HAS REQUESTED THE ASSISTANCE OF THE INTERNATIONAL ATOMIC
ENERGY AGENCY (HEREINAFTER CALLED THE "AGENCY") IN SECURING
A BOILING-WATER REACTOR WITH A RATED GENERATING CAPACITY
OF 650 MW(E), WHICH MEXICO DESIRES TO PURCHASE FROM A MANUFACTURER
IN THE UNITED STATES OF AMERICA (HEREINAFTER CALLED THE
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"MANUFACTURER"), AND IN SECURING THE SUPPLY OF URANIUM ENRICHMENT
SERVICES FOR THE REACTOR DURING ITS LIFETIME;

WHEREAS UNDER THE AGREEMENT FOR CO-OPERATION BETWEEN THE AGENCY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA (HEREINAFTER CALLED THE "UNITED STATES"), AS AMENDED (HEREINAFTER CALLED THE "CO-OPERATION AGREEMENT"), THE UNITED STATES UNDERTOOK TO MAKE AVAILABLE TO THE AGENCY FROM TIME TO TIME QUANTITIES OF SPECIAL FISSIONABLE MATERIAL AS MAY BE AUTHORIZED BY THE UNITED STATES, AND ALSO UNDERTOOK, SUBJECT TO VARIOUS APPLICABLE PROVISIONS AND LICENCE REQUIREMENTS, TO PERMIT, UPON REQUEST OF THE AGENCY, PERSONS UNDER THE JURISDICTION OF THE UNITED STATES TO MAKE ARRANGEMENTS TO TRANSFER AND EXPORT MATERIALS, EQUIPMENT OR FACILITIES FOR A MEMBER OF THE AGENCY IN CONNECTION WITH AN AGENCY PROJECT;

WHEREAS MEXICO DESIRES TO OBTAIN URANIUM ENRICHMENT SERVICES FROM THE UNITED STATES ATOMIC ENERGY COMMISSION (HEREINAFTER CALLED THE "COMMISSION");

WHEREAS THE COMMISSION IS WILLING TO PROVIDE SUCH SERVICES THROUGH THE AGENCY, PURSUANT TO THE CO-OPERATION AGREEMENT AND UNDER THE TERMS AND CONDITIONS PARTICULARLY SET FORTH IN A LONG-TERM, FIXED-COMMITMENT CONTRACT TO BE CONCLUDED BETWEEN THE COMMISSION AND THE MEXICAN NATIONAL NUCLEAR ENERGY INSTITUTE AND THE MEXICAN FEDERAL ELECTRICITY COMMISSION ACTION ON BEHALF OF MEXICO (HEREINAFTER CALLED THE "LONG-TERM CONTRACT");

WHEREAS THE AGENCY AND MEXICO ON 12 FEBRUARY 1974 CONCLUDED AN AGREEMENT FOR ASSISTANCE BY THE AGENCY TO MEXICO IN ESTABLISHING A FIRST REACTOR UNIT AT THE NUCLEAR POWER PLANT OF LAGUNA VERDE (HEREINAFTER CALLED THE "PROJECT AGREEMENT"); AND

WHEREAS THE BOARD OF GOVERNORS OF THE AGENCY APPROVED THE PROJECT ON 1974;

NOW, THEREFORE, THE AGENCY, THE COMMISSION ACTING ON BEHALF OF THE UNITED STATES, AND MEXICO HEREBY AGREE AS FOLLOWS:

ARTICLE I

AMENDMENT OF PROJECT AGREEMENT

IT IS AGREED BY MEXICO AND THE AGENCY THAT:

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(A) ARTICLE I OF THE PROJECT AGREEMENT IS HEREBY AMENDED TO INCLUDE THE ESTABLISHMENT, AT THE NUCLEAR POWER PLANT OF LAGUNA VERDE, LOCATED NEAR ALTO LUCERO, STATE OF VERACRUZ, OF A SECOND BOILING-WATER REACTOR WITH A RATED CORE POWER OUTPUT OF 1931 NW(TH) AND A RATED GENERATING CAPACITY OF 650 MW(E) (HEREINAFTER CALLED THE "REACTOR"), TO BE OPERATED BY THE MEXICAN FEDERAL ELECTRICITY COMMISSION; AND

(B) SECTION 2 OF ARTICLE II OF THE PROJECT AGREEMENT IS HEREBY

AMENDED TO INCLUDE, UNDER THE DEFINITION OF SUPPLIED MATERIAL,
THE ENRICHED URANIUM OBTAINED FROM THE PERFORMANCE OF
URANIUM ENRICHMENT SERVICES PURSUANT TO THE TERMS OF THIS
AGREEMENT.

ARTICLE II

SUPPLY OF REACTOR

THE AGENCY, PURSUANT TO ARTICLE IV OF THE CO-OPERATION AGREEMENT,
SHALL REQUEST THE UNITED STATES TO PERMIT THE TRANSFER AND EXPORT
TO MEXICO OF THE REACTOR, TOGETHER WITH COMPONENTS AND SPARE
PARTS, MANUFACTURED IN ACCORDANCE WITH A CONTRACT BETWEEN
MEXICO AND THE MANUFACTURER.

ARTICLE III

SUPPLY OF URANIUM ENRICHMENT SERVICES
THROUGH LONG-TERM, FIXED-COMMITMENT CONTRACT

1. SUBJECT TO THE PROVISIONS OF THE CO-OPERATION AGREEMENT,
THE COMMISSION SHALL FURNISH TO THE AGENCY FOR MEXICO AND MEXICO
SHALL PURCHASE, DURING THE PERIOD OF THIS AGREEMENT, CERTAIN
URANIUM ENRICHMENT SERVICES IN CONNECTION WITH THE OPERATION
OF THE NUCLEAR POWER PLANT OF LAGUNA VERDE, UNIT 2, IN THE
STATE OF VERACRUZ.

2. THE PARTICULAR TERMS AND CONDITIONS, INCLUDING CHARGES

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AND ADVANCE PAYMENT, FOR THE SUPPLY OF SUCH ENRICHMENT

SERVICES SHALL BE SPECIFIED IN THE LONG-TERM CONTRACT IN IMPLEMENTATION OF THIS AGREEMENT. AS PROVIDED FOR THERE-
UNDER, THE COMMISSION AND MEXICO SHALL AGREE UPON (A) A SCHEDULE OF ENRICHMENT SERVICES SPECIFYING THE NUMBER OF UNITS OF SEPARATIVE WORK TO BE FURNISHED BY THE COMMISSION AND PURCHASED BY MEXICO FOR DELIVERY DURING AN INITIAL FIRM PERIOD BEGINNING IN 1978 AND ENDING IN 1988; AND (B) PROCEDURES FOR REACHING AGREEMENT UPON MATERIAL SCHEDULE SPECIFYING THE QUANTITIES (KGU), ASSAYS (WEIGHT PER CENT 235U) AND TIMES OF DELIVERIES OF MATERIAL OTHER THAN NATURAL URANIUM PROPOSED TO BE DELIVERED BY MEXICO, AND OF ENRICHED URANIUM PROPOSED TO BE DELIVERED BY THE COMMISSION UPON PERFORMANCE OF THE ENRICHMENT SERVICES FOR THE INITIAL FIRM PERIOD AND THEREAFTER.

ARTICLE IV
PAYMENT

1. MEXICO SHALL PAY THE COMMISSION ALL CHARGES FOR ENRICHMENT SERVICES PROVIDED HEREUNDER, INCLUDING OTHER CHARGES CONNECTED THEREWITH AND ADVANCE PAYMENT THEREFOR, IN ACCORDANCE WITH THE PROVISIONS OF THE LONG-TERM CONTRACT.

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2. IT IS RECOGNIZED THAT IN EXTENDING ITS ASSISTANCE FOR THE PROJECT THE AGENCY IS NOT HEREUNDER PROVIDING ANY GUARANTEES

OR ASSUMING ANY FINANCIAL RESPONSIBILITY IN CONNECTION WITH THE SUPPLY OF ENRICHMENT SERVICES BY THE COMMISSION TO MEXICO.

ARTICLE V
DELIVERY - TITLE

1. (A) ALL MATERIAL DELIVERED BY THE COMMISSION TO MEXICO PURSUANT TO THE LONG-TERM CONTRACT WILL BE DELIVERED TO MEXICO, F.O.B. COMMERCIAL CONVEYANCE, AT THE COMMISSION FACILITY FROM WHICH SUCH MATERIAL IS TO BE FURNISHED, IN ACCORDANCE WITH THE LONG-TERM CONTRACT. TITLE TO SUCH MATERIAL SHALL PASS TO MEXICO UPON SUCH DELIVERY.
- (B) ALL ARRANGEMENTS FOR THE EXPORT FROM THE UNITED STATES OF AMERICA OF MATERIAL DELIVERED BY THE COMMISSION TO MEXICO SHALL BE THE RESPONSIBILITY OF

MEXICO, PROVIDED THAT THE UNITED STATES SHALL TAKE ALL APPROPRIATE STEPS TO FACILITATE THE ISSUANCE OF ANY REQUIRED LICENSES OR PERMITS. PRIOR TO THE EXPORT OF SUCH MATERIAL, MEXICO SHALL NOTIFY THE AGENCY OF THE AMOUNT THEREOF AND OF THE DATE AND METHOD OF SHIPMENT. AT SUCH TIME AS THE MATERIAL LEAVES THE JURISDICTION OF THE UNITED STATES OF AMERICA, TITLE THERETO SHALL PASS FROM MEXICO TO THE AGENCY AND SHALL THEREAFTER IMMEDIATELY AND INSTANTANEOUSLY PASS BACK TO MEXICO.

2. ALL MATERIAL DELIVERED OR RETURNED TO THE COMMISSION HEREUNDER AND PURSUANT TO THE PROVISIONS OF THE LONG-TERM CONTRACT SHALL BE DELIVERED TO THE COMMISSION, AT THE COMMISSION FACILITY OR FACILITIES TO BE DESIGNATED BY THE COMMISSION IN ACCORDANCE WITH THE LONG-TERM CONTRACT. TITLE TO SUCH MATERIAL SHALL PASS TO THE COMMISSION UPON DELIVERY AT SUCH FACILITY OR FACILITIES.

ARTICLE VI

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RESPONSIBILITY

1. NEITHER THE UNITED STATES, NOR THE COMMISSION, NOR ANY PERSON ACTING ON BEHALF OF THE COMMISSION SHALL BEAR ANY RESPONSIBILITY FOR THE SAFE HANDLING AND USE OF THE MATERIAL DELIVERED PURSUANT TO SECTION 1 OF ARTICLE V.

2. NEITHER THE AGENCY NOR ANY PERSON ACTING ON ITS BEHALF SHALL AT ANY TIME BEAR ANY RESPONSIBILITIES TOWARDS MEXICO OR ANY PERSON CLAIMING THROUGH MEXICO FOR THE SAFE HANDLING AND THE USE OF SUCH MATERIAL.

ARTICLE VII

TERMINATION - SUSPENSION - AMENDMENT

1. IN THE EVENT OF TERMINATION OR SUSPENSION OF THE LONG-TERM CONTRACT AS PROVIDED FOR THEREUNDER, THE COMMISSION AND MEXICO SHALL JOINTLY NOTIFY THE AGENCY OF THE DATE ON WHICH SUCH TERMINATION OR SUSPENSION IS EFFECTIVE. THIS AGREEMENT SHALL BE TERMINATED OR SUSPENDED AS PROVIDED IN SUCH NOTICE. IT IS AGREED BY MEXICO AND THE AGENCY THAT ANY SUCH TERMINATION OR SUSPENSION SHALL BE WITHOUT PREJUDICE TO THE IMPLEMENTATION OF THE RIGHTS AND RESPONSIBILITIES OF THE AGENCY UNDER THE PROJECT AGREEMENT AS AMENDED PURSUANT TO ARTICLE I OF THIS AGREEMENT.

2. IN THE EVENT THE LONG-TERM CONTRACT IS AMENDED AS

PROVIDED FOR THEREUNDER, THE COMMISSION AND MEXICO SHALL,

BY A WRITTEN NOTICE TO THE AGENCY, FOTIFY THE AGENCY OF THE
AMENDMENT OR AMENDMENTS. AT THE REQUEST OF ANY PARTY TO
THIS AGREEMENT, THE PARTIES SHALL CONSULT EACH OTHER ON
CORRESPONDING AMENDMENTS TO THIS AGREEMENT AS APPROPRIATE.

ARTICLE VIII
SETTLEMENT OF DISPUTES

ANY DISPUTE INVOLVING THE AGENCY AND ONE OR BOTH OF THE OTHER
PARTIES TO THIS AGREEMENT AND ARISING OUT OF THE INTERPRETA-
TION OR APPLICATION OF THIS AGREEMENT, WHICH IS NOT SETTLED
BY NEGOTIATION OR AS MAY OTHERWISE BE AGREED BY THE PARTIES
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CONCERNED, SHALL ON THE REQUEST OF ANY PARTY BE SUBMITTED
TO AN ARBITRAL TRIBUNAL COMPOSED AS FOLLOWS:

(A) IF THE DISPUTE INVOLVES ONLY TWO OF THE PARTIES
TO THIS AGREEMENT, ALL THREE PARTIES AGREEING THAT
THE THIRD IS NOT CONCERNED, THE TWO PARTIES INVOLVED
SHALL EACH DESIGNATE ONE ARBITRATOR, AND THE TWO
ARBITRATORS SO DESIGNATED SHALL ELECT A THIRD, WHO
SHALL BE THE CHAIRMAN. IF WITHIN THIRTY (30) DAYS
OF THE REQUEST FOR ARBITRATION EITHER PARTY HAS NOT
DESIGNATED AN ARBITRATOR, EITHER PARTY TO THE
DISPUTE MAY REQUEST THE PRESIDENT OF THE INTERNATIONAL

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COURT OF JUSTICE TO APPOINT AN ARBITRATOR. THE SAME PROCEDURE SHALL APPLY IF, WITHIN THIRTY (30) DAYS OF OF THE DESIGNATION OR APPOINTMENT OF THE SECOND ARBITRATOR, THE THRID ARBITRATOR HAS NOT BEEN ELECTED.

(B) IF THE DISPUTE INVOLVES ALL THREE PARTIES TO THIS AGREEMENT, EACH PARTY SHALL DESIGNATE ONE ARBITRATOR, AND THE THREE ARBITRATORS SO DESIGNATED SHALL BY UNANIMOUS DECISION ELECT A FOURTH ARBITRATOR, WHO SHALL BE THE CHAIRMAN, AND A FIFTH ARBITRATOR. IF WITHIN THIRTY (30) DAYS OF THE REQUEST FOR ARBITRATION ANY PARTY HAS NOT DESIGNATED AN ARBITRATOR, ANY PARTY MAY REQUEST THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE TO APPOINT THE NECESSARY NUMBER OF ARBITRATORS. THE SAME PROCEDURE SHALL APPLY IF, WITHIN THIRTY (30) DAYS OF THE DESIGNATION OF APPOINTMENT OF THE THIRD OF THE FIRST THREE ARBITRATORS, THE CHAIRMAN OR THE FIFTH ARBITRATOR HAS NOT BEEN ELECTED.

A MAJORITY OF THE MEMBERS OF THE ARBITRAL TRIBUNAL SHALL CONSTITUTE A QUORUM, AND ALL DECISIONS SHALL BE MADE BY MAJORITY VOTE. THE ARBITRAL PROCEDURE SHALL BE ESTABLISHED BY THE TRIBUNAL, WHOSE DECISIONS, INCLUDING ALL RULINGS CONCERNING ITS CONSTITUTION, PROCEDURE, JURISDICTION AND THE DIVISION OF THE EXPENSES OF ARBITRATION BETWEEN THE PARTIES, SHALL BE FINAL AND BINDING ON
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ALL PARTIES. THE REMUNERATION OF THE ARBITRATORS SHALL BE DETERMINED ON THE SAME BASIS AS THAT OF AD HOC JUDGES OF THE INTERNATIONAL COURT OF JUSTICE.

ARTICLE IX

ENTRY INTO FORCE - DURATION

THIS AGREEMENT SHALL ENTER INTO FORCE UPON SIGNATURE BY OR FOR THE DIRECTOR GENERAL OF THE AGENCY AND BY THE AUTHORIZED REPRESENTATIVES OF THE COMMISSION AND MEXICO, AND SHALL REMAIN IN FORCE FOR THE PERIOD OF THE LONG-TERM CONTRACT OR FOR A PERIOD OF THIRTY FOUR (34) YEARS, WHICHEVER IS GREATER, PROVIDED THAT THE PERIOD OF THIS AGREEMENT SHALL IN NO EVENT EXTEND BEYOND THE PERIOD DURING WHICH THE CO-OPERATION AGREEMENT IS IN FORCE.

ARTICLE X

AGREEMENT FOR CO-OPERATION

THIS AGREEMENT, AS WELL AS THE LONG-TERM CONTRACT, SHALL BE
SUBJECT TO AND IN ACCORDANCE WITH THE CO-OPERATION AGREEMENT,
AS IT MAY BE AMENDED.

DONE IN VIENNA, ON THE DAY OF 1974, IN
TRIPPLICATE IN THE ENGLISH AND SPANISH LANGUAGES, BOTH TEXTS
BEING EQUALLY AUTHENTIC. PORTER

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